

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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GLAXO GROUP LIMITED,	:
	:
Plaintiff,	:
	:
v.	:
	:
TEVA PHARMACEUTICALS USA,	:
INC. and TEVA PHARMACEUTICAL	:
INDUSTRIES LIMITED,	:
	:
Defendant.	:
	:
-----X	

Civil Action No. 04-171-KAJ

REQUEST FOR INTERNATIONAL JUDICIAL ASSISTANCE

**LETTER OF REQUEST FOR THE TAKING
OF EVIDENCE FROM MORRIS GOODMAN**

FROM: The United States District Court for the District of Delaware

TO: The Appropriate Civil Judicial Authority for the Province
of Quebec, Canada

1. This letter requests your assistance in obtaining testimony and evidence for use in the above civil proceeding now pending in the United States District Court for the District of Delaware as Civil Action No. 04-171-KAJ. A trial on the merits in this matter is scheduled to occur in Wilmington, Delaware. The Honorable Kent A. Jordan presides over this action. The topics for the deposition and requested documents are listed on the attached Schedule A.

2. Glaxo Group Limited ("Glaxo"), is a company organized and existing under the laws of England and Wales and having a registered office at Glaxo Wellcome House, Berkeley Avenue, Greenford, Middlesex, UB6 ONN, Middlesex, England. Glaxo, the plaintiff and a party to this action, has requested the testimony under oath of Morris Goodman, Chairman and Founder of Pharmascience ("Pharmascience") and director of its division PendoPharm Inc. ("PendoPharm") who resides in your jurisdiction.

Home Address of Morris Goodman

Hampstead, Quebec,
H3X 3A1
Canada

Business Address of Pharmascience Inc. and PendoPharm Inc.:

6111 Royalmount Avenue, #100
Montreal, Quebec
H4P 2T4
Canada

3. Glaxo is represented in Canada by:

Brian R. Daley
Ogilvy Renault LLP
1981 McGill College Avenue, Suite 1100
Montreal, Quebec H3A 3C1
Canada
Telephone: (514) 847-4764

Glaxo is represented in the United States by:

Brian P. Murphy
Jason A. Lief
Thomas J. Puppa
Morgan Lewis & Bockius
101 Park Avenue
New York, New York 10178
Telephone: (212) 309-6000

Francis DiGiovanni
Connolly Bove Lodge & Hutz, LLP
The Nemours Building
1007 North Orange Street
P.O. Box 2207
Wilmington, DE 19899
Telephone: (302) 658-9141

4. Teva Pharmaceuticals USA, is a Delaware corporation and maintains a registered agent in Delaware. Teva Pharmaceutical Industries Limited is an Israeli corporation having its principal place of business in Petach Tikva, Israel. Defendants Teva Pharmaceuticals USA, Inc. and Teva Pharmaceutical Industries Limited are collectively referred to herein as "Teva." Teva, a party to this action, is represented in the United States by:

Mark D. Schuman, Esq.
MERCHANT & GOULD
3200 IDS Center
80 South 8th Street
Minneapolis, MN 55402
Telephone: (612) 332-5300

Josy W. Ingersoll, Esq.
YOUNG CONAWAY STARGATT
& TAYLOR
The Brandywine Building
100 West Street, 17th Floor
P.O. Box 391
Wilmington, DE 19899-0391
Telephone: (302) 571-1253

5. This is a civil action by Glaxo for alleged infringement of United States Patent No. 5,068,249 ("the '249 patent"), entitled "Aqueous Ranitidine Compositions Stabilized with Ethanol," arising under the patent laws of the United States, 35 U.S.C. §§ 271 *et seq.* and 21 U.S.C. § 355. Teva has denied infringement and has asserted several affirmative defenses and counterclaims including, for purposes relevant here, the

invalidity of the '249 patent. This Court has jurisdiction over this action and venue is proper in the District of Delaware pursuant to 28 U.S.C. §§ 1331, 1338(a), 1391(b) and 1400(b).

6. The Court, in a Scheduling Order issued August 5, 2004, has set a deadline of January 30, 2006 for completing all discovery, including obtaining the testimony of witnesses who cannot be compelled to attend the trial in Delaware. At a recent deposition of defendant Teva it was learned that Pharmascience and/or PendoPharm may have documents relevant to this litigation. Plaintiff Glaxo seeks documents and the recorded testimony under oath of a representative of Pharmascience and/or PendoPharm, namely Morris Goodman.

7. The Court has determined that Pharmascience, through its PendoPharm subsidiary or division, is believed to have information relevant to the issues in this action. This information consists of documents that are relevant to the formulation, development, and testing of ranitidine hydrochloride oral solution by Novopharm Limited ("Novopharm") (now a wholly owned subsidiary of Teva) in the mid to late 1990's. Glaxo has asserted that:

- (a) Pangeo Pharma (Canada), Inc., ("Pangeo") purchased the Novopharm facility where the above work was performed in the late 1990's;
- (b) Pangeo then continued the formulation, development or testing of ranitidine hydrochloride oral solution for Novopharm for some period of time;
- (c) Pangeo has documents relating to either its work or Novopharm's work on ranitidine hydrochloride oral solution;

(d) PendoPharm, a subsidiary or division of Pharmascience, Inc., was created by the merger of Pangeo and Pharmascience's Consumer Products and Private Label Division in 2004; and

(e) The documents evidencing this work by either Novopharm or Pangeo are relevant to the issue of infringement of the patent under the doctrine of equivalents and the validity of the patent.

8. Teva has submitted an Abbreviated New Drug Application ("ANDA") to the Food and Drug Administration ("FDA") seeking approval to market its proposed generic formulation of ranitidine hydrochloride oral solution. After submission of its ANDA Teva was then required to notify Glaxo, the '249 patent holder, of its ANDA filing. Glaxo has filed this civil action against Teva alleging infringement of the '249 patent.

9. Morris Goodman is the Founder and Chairman of Pharmascience. He is also the sole Director of PendoPharm. As such, he is believed to have access to the documents and to be able to give testimony on the matters described in Schedule A.

10. Mr. Goodman's evidence is believed to be material to the pending dispute, and the Court believes that justice cannot be done between the parties without Mr. Goodman's evidence on the matters described in Schedule A. Mr. Goodman's evidence taken pursuant to the Letters of Request will be admissible at trial, subject to the United States Federal Rules of Evidence.

11. Plaintiff Glaxo has made efforts to obtain the documents described in Schedule A without judicial intervention. Such efforts have failed. (*See* Letters attached as Ex. B and Ex. C)

12. The parties have indicated to this Court that they are prepared to allow Pharmascience and/or PendoPharm to produce another appropriate representative in place of Mr. Goodman to give testimony and produce documents in respect of the matters set out in Schedule A.

13. Accordingly, we request assistance, by steps appropriate to the Canadian judicial authority:

(a) To secure the attendance of Morris Goodman, or a witness acceptable to the parties, at a time and place to be fixed by the Canadian judicial authority, for giving sworn, recorded (by video and stenographer) testimony in response to questions from Glaxo's representative in this matter. The testimony is to be taken under oath or solemn affirmation, with any exhibits to the deposition marked and attested to;

(b) To allow each of Glaxo's and Teva's representatives an equal opportunity to ask questions regarding the issues described in Schedule A;

(c) To require the witness to produce documents in his possession, power or control that are described in the attached Schedule A, two weeks prior to the deposition, at a time and place to be fixed by the Canadian judicial authority. To increase the efficiency of the deposition, the Court requests that Glaxo's and Teva's representatives be allowed an opportunity to inspect and copy these documents; and

(d) To forward the record of the testimony for use in this action to:

Brian P. Murphy
Morgan Lewis & Bockius
101 Park Avenue
New York, New York 10178
Telephone: (212) 309-6000

and

Mark D. Schuman
MERCHANT & GOULD
3200 IDS Center
80 South 8th Street
Minneapolis, MN 55402
Telephone: (612) 332-5300

within 20 days after the completion of deposition, but no later than January 1, 2006.

14. The Court requests that information regarding the time and place where proceedings under this Letter of Request are to take place be forwarded directly to the party representatives in Canada and the United States, at the addresses set out in paragraph 3 and 4 herein.

15. The cooperation of the Canadian judicial authority for Quebec, Canada is greatly appreciated, and the United States District Court for the District of Delaware offers reciprocal assistance to the Canadian Courts for similar proceedings.

Dated: _____
Wilmington, Delaware

United States District Court Judge

I certify that the foregoing is an official document of the United States District Court of Delaware to which the Seal of the Court has been applied.

Clerk of the Court

**UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE**

CERTIFICATE OF SERVICE

I, hereby certify that on August 1, 2005, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, which will send notification of such filing(s) to the following, and I further certify that I have served via Hand Delivery a copy of said document to:

Josy W. Ingersoll, Esq.
Young Conway Stargatt & Taylor
The Brandywine Building
1000 West Street, 17th Floor
P.O. Box 391
Wilmington, DE 19899

I hereby certify that on this same date, I have mailed by United States Postal Service, the document(s) to the following non-registered participant:

Mark D. Schuman, Esq.
Merhant & Grould LLC
3200 IDS Center
80 South 8th Street
Minneapolis, MN 55402

/s/ Francis DiGiovanni
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CONNOLLY BOVE LODGE & HUTZ LLP
The Nemours Building
1007 N. Orange Street
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Attorneys for Plaintiff Glaxo Group Limited